

16-90098-jm, 16-90106-jm, 16-90110-jm  
January 24, 2017  
Chief Judge

**JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT**

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In re  
CHARGES OF JUDICIAL MISCONDUCT

Docket Nos. 16-90098-jm  
16-90106-jm  
16-90110-jm

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ROBERT A. KATZMANN, *Chief Judge*:

On September 30, November 7, 14, and 15, and December 9, 2016, and January 3 and 17, 2017, the Complainant filed three complaints and supplemental complaints with the Clerk’s Office of the United States Court of Appeals for the Second Circuit pursuant to the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364 (the “Act”), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings, 249 F.R.D. 662 (U.S. Jud. Conf. 2008) (the “Rules”), charging three district judges (Judges “A,” “B,” and “C”) of this Circuit with misconduct.

**BACKGROUND**

In 1996, the Complainant filed a pro se civil rights action that was originally assigned to Judge A. In 2000, Judge B, who has since retired, dismissed the

complaint. Judge A died in 2008.

In 2014, the Complainant filed a new action raising related claims. Judge C dismissed her complaint in 2015, warned her that further duplicative filings may result in sanctions, and denied her request for reconsideration. The court of appeals dismissed the Complainant's appeal because it lacked an arguable basis in law or fact.

The misconduct complaints and supplemental filings raise numerous challenges to Judge A's and Judge B's rulings and official actions and further allege bias and conspiracy. The misconduct complaints and supplemental filings allege that Judge C: [i] was hostile toward the Complainant and discriminated against her based on her "race, color, creed, [and] nationality"; [ii] refused to consider her new evidence and ignored the prior fraud on the court; [iii] improperly dismissed her complaint and denied her request for reconsideration; and [iv] was biased in favor of the defendants. The complaints and supplemental filings also argue at length the merits of the underlying actions and allege misconduct by the defendants, various attorneys, administrative and state court judges, and court staff.

## **DISCUSSION**

The complaints are dismissed.

The complaint proceedings against Judges A and B are concluded as moot. Judge A died in 2008, long before the filing of the complaint against him, and Judge B has retired. The Act's purpose is essentially forward looking and not punitive. The emphasis is on correction of conditions that interfere with the effective and expeditious administration of the business of the courts. Because Judge A has died, and Judge B has retired, "action on the complaint[s] is no longer necessary because of intervening events." 28 U.S.C. § 352(b)(2); Rule 11(e) ("The chief judge may conclude the complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible."); Rule 11 cmt. (identifying "resignation from judicial office" as such an intervening event).

The complaint against Judge C is dismissed primarily as merits related. An allegation that a judge, in reaching a decision, neglected to consider fully all arguments presented, failed to comprehend the meaning or import of certain statutes or cases, or disregarded certain key facts or evidence is merely challenging the correctness of the judge's decision. In other words, what such allegations contend is that the judge got it wrong, not that the judge engaged in

judicial misconduct.

The allegations against Judge C fall largely into this category.

Accordingly, these allegations are dismissed as “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); Rule 3(h)(3)(A) (“An allegation that calls into question the correctness of a judge’s ruling . . . , without more, is merits-related.”). Purely merits-related allegations are excluded from the Act to “preserve[] the independence of judges in the exercise of judicial power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge’s ruling.” Rule 3 cmt. Such challenges can be pursued, to the extent the law allows, only through normal appellate procedures.

The allegations of hostility, discrimination, and bias against Judge C appear entirely derivative of the merits-related charges, but to the extent these allegations are separate, they are wholly unsupported, and are therefore dismissed as “lacking sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D). A decision for or against a party does not evidence bias. Nor do several such decisions.

Finally, the allegations concerning the conduct of the defendants, attorneys, administrative and state court judges, and court staff are dismissed because the

Act applies only to the conduct of federal judges. *See* 28 U.S.C. § 351(a), (d)(1);

Rule 4.

The Clerk is directed to transmit copies of this order to the Complainant and to Judges B and C.